discretion was whether, the law being what it is and the plaintiffs therefore having the choice of proceeding by motion or by summons, it was reasonable and proper, to quote the words of Tomlin J. in *Fox v. Luke*[1] *supra*, for the plaintiffs to proceed by way of motion in open Court instead of by the less expensive procedure of summons in chambers. It is clear that the learned trial Judge did not apply his mind to this question at all and consequently there was no real exercise of judicial discretion in this case. It is equally clear that if he had applied his mind to the question, he would have found no materials upon which he could have ordered the defendant to pay more than the costs of proceeding by way of summons.

Accordingly I would propose that the order of the learned Judge in this case be varied by ordering that the defendant pay only such costs as would have been incurred if the application for judgment had been made by summons in chambers. The defendant must have the costs of this appeal.

Such costs fixed at $1,000.00.

Order varied.

Solicitors: *Braddell Bros.; R. C. H. Lim & Co.*

PUBLIC PROSECUTOR v. JOMI

[R. Cr. J. (Smith J.) June 14, 1957]

[Malacca — Criminal Revision No. 6 of 1956]

Criminal Procedure Code (Cap. 21), s. 183(2) — Conditional discharge — No conviction to be recorded.

No conviction should be recorded against a person charged before a Court with an offence punishable by such Court, where the Court finds that the charge is proved, but is of the opinion that the offender should be discharged conditionally on his entering into a bond with or without sureties under the provisions of section 183(2) of the Settlements Criminal Procedure Code. The order in such a case should follow the wording of the section in question.

[**Editorial Note:** section 183 of the Criminal Procedure Code (Cap. 21) in Singapore was repealed by Ordinance No. 27 of 1951, See now section 5 of the Probation of Offenders Ordinance (Cap. 135).]

CRIMINAL REVISION.

L. A. Massie (Federal Counsel) for the appellant.

Respondent in person.

Smith J. : — The accused in this case was charged with the offence of possession of scrap rubber reasonably suspected of being stolen, an offence under regulation 4(1) of the Emergency (Rubber Control) Regulations, 1949, and punishable under Regulation 5(2) thereof.

The learned President found the case against the accused proved and was of opinion that in this case the appropriate course was to bind the accused over in the sum of $500 with two sureties under the supervision of the Probation Officer for one year. The learned President had, however, recorded a conviction and, on conviction, it is obligatory that the Court shall pass a sentence of imprisonment not being less than three months — see Regulation 5(2).

In order to give effect to the order of the learned President, it is necessary that the conviction be varied and that there be substituted therefor a statement that the case against the accused has been proved.

In order to give effect to the bond proposed by the learned President, I varied his order to one discharging the offender conditionally upon her entering into a bond with two sureties to be of good behaviour and to appear for conviction and sentence when called upon at any time during the next one year. This is the appropriate order under section 183(2) of the Straits Criminal Procedure Code when the Court has found that the charge is proved but there are extenuating circumstances.

Order accordingly.

PERUMAL CHETTIAR v. PUBLIC PROSECUTOR

[A. Cr. J. (Good J.) June 28, 1957]

[Ipoh — Criminal Appeal No. 20 of 1957]

Criminal Procedure Code (Cap. 6), ss. 165 & 302(ii) — Where plea of autrefois acquit not available — Possession of stolen property.

This was an appeal against a conviction for an offence under section 6 of the Second-hand Dealers Ordinance, 1946, punishable under section 9. The main ground of appeal was that the Magistrate should have accepted the plea of *autrefois acquit* put forward at the trial, as the accused had been previously tried on a charge under section 29 of the Minor Offences Ordinance, 1955, of being in possession of property reasonably suspected of being stolen and was acquitted.

Held: (1) in this case the plea of *autrefois acquit* was not available to the appellant at his second trial;

(2) possession of the property which was an ingredient of the charge at the first trial was the necessary consequence of the purchase of the property which was an ingredient of the charge at the second trial, but these were two separate and distinct acts so connected together to form the same transaction;

(3) in this case the accused could have been charged at the first trial with both offences under section 165 of the Criminal Procedure Code and therefore section 302(ii) of the Criminal Procedure Code applied and the Magistrate could properly try the accused at the second trial on the charge which was the occasion of the appeal.

MAGISTRATE'S CRIMINAL APPEAL.

M. S. Mahendran for the appellant.

Inche Abdul Kadir (Federal Counsel) for the respondent.

Good J. : — This is an appeal against a conviction for an offence under section 6 of the Second-hand Dealers Ordinance, 1946, punishable under section 9. The main ground of appeal is that the Magistrate should have accepted the plea of *autrefois acquit* put forward at the trial and acquitted the appellant under section 302 (i) of the Criminal Procedure Code.

The charge alleged that the appellant had purchased brass, alloy, copper and zinc in contravention of section 6 of the Second-hand Dealers Ordinance. He had been previously tried on a charge under section 29 of the Minor Offences Ordinance, 1955, of being in possession of property reasonably suspected of being stolen and was acquitted.

In the present appeal counsel urged that the appellant had been tried on the same facts for an offence for which a different charge might have been made against him at the first trial under section 166 Criminal Procedure Code.

These cases always give rise to difficulty. There is no difficulty in interpreting the provisions of sub-sections (i) and (ii) of section 302 Criminal Procedure Code. The difficulty lies in determining which of the two sections 165 or 166 are applicable to the facts of a particular case. There is abundant authority, mostly from India, on this type of case but each case has to be looked at in the light of its own peculiar facts and circumstances in order to determine whether it comes within the provisions of section 302 (i) or those of section 302 (ii).

In a recent appeal the same point arose in connection with a trial for the offence of voluntarily causing hurt under section 323 Penal Code which had been preceded by a trial of the same person in respect of the same incident for the offence of disorderly behaviour in a public place under section 21 of the Minor Offences Ordinance, 1955. In that case counsel for the appellant urged, as counsel for the appellant has done in the present appeal, that the appellant had been tried again on the same facts for an offence for which he could not be tried by reason of the provisions of section 302 (i) Criminal Procedure Code. I held that while causing hurt to a person in a public place would probably always constitute disorderly behaviour it was not necessarily true that in the course of a single incident the disorderly behaviour and causing of hurt were one and the same act. I considered that there had been disorderly behaviour resulting in the causing of hurt, that the two acts could be distinguished, that at the first trial the accused could have been charged with both offences under section 165 Criminal Procedure Code and that therefore a plea of *autrefois convict* or *autrefois acquit* as the case might be was not available to him at the second trial under section 302 (ii).

I have come to the same conclusion in the present appeal. It appears to me that the possession of the property which was an ingredient of the charge at the first trial was the necessary consequence of the purchase of the property which was an ingredient of the charge at the second trial but that these were two separate and distinct acts so connected together as to form the same transaction. In my opinion, the accused could have been charged at the first trial with both offences under section 165 Criminal Procedure Code and I have therefore come to the conclusion that section 302 (ii) Criminal Procedure Code applies and that the Magistrate could properly try the accused at the second trial on the charge which is the occasion of the present appeal. For these reasons I dismiss the appeal.

Appeal dismissed.

Re CHIANG MENG OIL MILLS LTD.; *Ex parte* THE OFFICIAL RECEIVER

[A.C.J. (Whyatt C.J.) July 10, 1957]

[Singapore — Companies Winding-up No. 1 of 1950]

Companies Ordinance (Cap. 174) — Company — Winding-up — Creditors assigning debts — Whether Official Receiver can admit proof of debts by assignee.

In this application two creditors of the Chiang Meng Oil Mills Ltd. sought for an order that the decision of the Official Receiver and Liquidator of the company admitting proof of one Lim Boon Eng for $585,603 should be reversed or varied. Lim Boon Eng was not proving as an ordinary creditor but as the assignee of seventeen creditors pursuant to an order of the Court giving him liberty to do so. These seventeen creditors were ordinary trade creditors and if any one of them had filed a proof and claimed a dividend instead of assigning his debt to Lim Boon Eng, the Official Receiver would have admitted the proof.

Held: there is no reason why the Official Receiver should adopt a different attitude towards these debts because the proofs were submitted by a different person, particularly when that person had obtained the authority of the Court to prove in substitution for the assigning creditors.

If in the future, evidence becomes available to the Official Receiver which will enable him to prove that the transaction was in fact a fraudulent trick on other creditors, he could apply to the Court to have his proof expunged.